Maintenance and Data Processing Agreement „Predictive Maintenance“

The following agreement is hereby concluded between the Parties

*X GmbH*

*X-Straße 123*

*12345 Musterstadt*

**- Customer / Controller -**

and

*Hochland Natec GmbH*

*Kolpingstraße 32*

*88178 Heimenkirch*

**- Contractor / Processor -**

**Preamble**

The contractor maintains and cares for technical installations for the food production of the customer on his behalf – also by remote maintenance.

In the context of these maintenance, servicing and/or process optimization activities, it is not excluded that personal data of the customer or its employees are also processed by the contractor. This information is transferred electronically from the technical equipment to the contractor via a set up access.

This agreement shall be concluded between the parties as a supplementary regulation for compliance with the data protection regulations of Article 28 of the General Data Protection Regulation (GDPR), insofar as the client is obliged under Art. 2 and 3 GDPR to comply with the provisions of the GDPR.

# Duration and termination of the contract

(1) The contractor performs services (maintenance and/or servicing of IT and OT systems) for the customer. A contractual relationship exists in this respect between the parties ("main contract"). This agreement shall commence upon signature by both parties and shall apply for the duration of the respective main contract.

(2) An extraordinary right of termination of each party remains unaffected.

# Subject of the contract

The contractor shall provide services for the customer as stipulated in the preamble and in the main contract and, for this purpose, shall receive remote access from the customer to the latter's technical equipment for food production. This access enables him to view, read out and/or control the machine states and processes.

If the respective plant has a user management system, the contractor can also obtain knowledge of the data of the respective machine operators.

The mandate may also include the processing of the following types of personal data:

* User data of persons who operate the technical equipment or are registered as users at the equipment.

The group of data subjects affected by the data processing:

* Employees of the customer
* if necessary, other persons whom the customer has commissioned to control the technical systems.

# Rights and obligations of the customer

(1) The customer has the right to issue additional instructions to the contractor at any time regarding the type, scope and procedures for the maintenance and servicing of IT/OT systems. Instructions can be given in text form (e.g. e-mail).

(2) Regulations concerning a possible remuneration of additional expenses incurred by the contractor due to supplementary instructions of the customer remain unaffected.

(3) The customer shall inform the contractor without delay if he discovers errors or irregularities in connection with the maintenance and care by the processor.

# General obligations of the contractor / processor

(1) The contractor is obliged to structure his company and his operating procedures in such a way that the data which he processes in connection with the maintenance/care work in the order are protected from unauthorized access by third parties.

(2) The contractor shall inform the customer immediately if, in his opinion, an instruction issued by the customer violates statutory regulations. The contractor is entitled to suspend the execution of the instruction in question until it is confirmed or amended by the customer.

(3) The contractor is obliged to inform the customer immediately of any violation of data protection regulations or of the contractual agreements made and/or the instructions issued by the Customer which has occurred in the course of the processing of data by him or by other persons involved in the processing.

(4) The contractor is aware that the customer may be obliged to notify the supervisory authority in accordance with Articles 33, 34 GDPR in the event of a breach of data protection, which requires notification to the supervisory authority within 72 hours of becoming known. The contractor will support the customer in the implementation of the notification obligations. The contractor shall inform the customer in particular and without delay about unauthorized access to personal data processed on behalf of the customer.

(5) The contractor shall comply with his obligations under Art. 30 para. 2 GDPR to keep a processing register.

(6) The Contractor shall support the customer in complying with the obligations set out in Art. 33-36 GDPR, insofar as the customer is dependent on the support of the contractor in this respect.

# Supervisory powers

(1) The customer shall have the right to check the contractor's compliance with the statutory provisions on data protection and/or compliance with the contractual provisions agreed between the parties and/or the contractor's compliance with the customer's instructions to the extent necessary at any time.

(2) The contractor is obliged to provide the customer with information, insofar as this is necessary for the performance of the inspection within the meaning of No. 5, paragraph 1.

(3) After prior notification and with a reasonable period of notice, the customer may carry out the inspection within the meaning of No. 5, paragraph 1 at the contractor's premises during normal business hours. The customer shall ensure that the checks are only carried out to the extent necessary if the contractor's operating procedures could be disrupted by the checks.

(4) The contractor is obliged, in the event of measures taken by the supervisory authority in relation to the customer within the meaning of Art. 58 GDPR in conjunction with § 40 of the Federal German Data Protection Act (BDSG), in particular with regard to duties of information and control, the contractor is obliged to provide the necessary information to the customer.

# Subcontracting relationships

(1) The assignment of subcontractors by the contractor is only permitted with the written consent of the customer.

(2) At the time of the conclusion of the contract, the subcontractors listed in Annex 1 are engaged in the processing of personal data for the contractor to the extent specified therein. The customer declares his agreement with their assignment.

(3) The contractor shall carefully select the subcontractor and check before the assignment that the subcontractor is able to comply with the agreements made between the customer and the contractor. In particular, the contractor shall check in advance and regularly during the term of the contract that the subcontractor has taken the technical and organizational measures required under Art. 32 GDPR for the protection of personal data. The result of the control is to be documented by the contractor and sent to the customer on request. The contractor is obliged to obtain confirmation from the sub-contractor that the latter has appointed a company data protection officer, provided that the appointment is required by Art. 37 GDPR in conjunction with § 38 BDSG.

(4) The contractor shall ensure that the regulations agreed in this contract and any supplementary instructions of the customer shall also apply to the subcontractor. The contractor shall regularly monitor compliance with these obligations.

(5) The obligation of the subcontractor must comply with the requirements of Art. 28 para. 4 GDPR.

(6) In particular, the contractor is obliged to ensure by contractual provisions that the control powers (No. 5 of this contract) of the customer and supervisory authorities also apply to the subcontractor and that corresponding control rights are agreed by the customer and supervisory authorities. It shall also be contractually agreed that the subcontractor shall tolerate these control measures and any on-site inspections.

# Confidentiality and secrecy

(1) The contractor is obliged to maintain confidentiality when processing data for the customer. The contractor undertakes to observe the rules on the protection of secrets communicated to him by the customer.

(2) The contractor warrants that he has familiarized the employees employed in the performance of the work with the provisions of data protection applicable to them and has obliged them to maintain confidentiality in the handling of personal data, unless they are already subject to an appropriate statutory duty of confidentiality elsewhere.

# Data Subject Rights

(1) The contracting entity shall be solely responsible for safeguarding the rights of the persons concerned.

(2) The contractor shall support the customer with suitable technical and organisational measures in order to comply with the customer's obligation to answer inquiries from affected persons in accordance with Articles 12-23 GDPR, insofar as the customer is dependent on the contractor's support in this respect.

# Technical and organizational measures for data security and control

(1) The contractor undertakes technical and organizational measures to comply with the provisions of Art. 32 GDPR. The control powers of the customer pursuant to No. 5 shall also apply to the technical and organizational measures of the contractor.

(2) For the implementation of controls according to No. 5, paragraph 3, the parties assume that an inspection is necessary at most once a year. Further inspections shall be justified by the customer, stating the reason. In the event of on-site inspections, the customer shall reimburse the contractor for the expenses incurred, including personnel costs, for the supervision and accompaniment of the inspectors on site to a reasonable extent. The bases for the calculation of costs will be communicated to the customer by the contractor before the inspection is carried out. If a supervisory authority of the customer orders an on-site inspection, the contractor shall enable this accordingly.

(3) At the discretion of the contractor, proof of compliance with the technical and organizational measures may also be provided, instead of an on-site inspection, by the submission of a suitable, up-to-date certificate by a recognized, independent body if the audit report enables the customer to satisfy itself in an appropriate manner of compliance with the technical and organizational measures.

# Termination

After termination of the contract, the contractor shall hand over to the customer on request – or, if this is not possible, delete – all documents, data and the results of processing or use that have come into his possession and are connected with the contractual relationship.

# Final provisions

(1) The law of the Federal Republic of Germany shall apply.

(2) Should individual parts of this contract be invalid, this shall not affect the validity of the remaining provisions of the contract.

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Place Date Place Date

 - Customer - - Contractor -

**Annex 1**

Authorised subcontractors:

1. symmedia GmbH, Bielefeld, Germany

Provider of he symmedia Support Portal and related services

1. Hochland SE, Heimenkirch, Germany

Administration of IT-Systems of the Hochland Group, including Hochland Natec GmbH